

FCC MAIL SECTION

Federal Communications Commission

FCC 98-164

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C.

In the Matter of

1998 Biennial Regulatory Review --
 Part 61 of the Commission's Rules
 and Related Tariffing Requirements

CC Docket No. 98-131

NOTICE OF PROPOSED RULEMAKING

Adopted: July 15, 1998; Released: July 24, 1998

Comment Date: 30 days after publication in the Federal Register**Reply Date: 60 days after publication in the Federal Register**

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

I. INTRODUCTION AND BACKGROUND

1. Section 11 of the Communications Act of 1934, as amended (Act), requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161. Accordingly, the Commission has initiated a comprehensive review of telecommunications and other regulations to promote meaningful deregulation and streamlining where competition and other consideration warrant such action.

2. Over the years, we have taken action to relax price cap rules and other Part 61 tariffing requirements when conditions warranted.¹ As part of the 1998 biennial regulatory review, we again reviewed our price cap rules, as well as other rules in Part 61, and we have found a number of rules that no longer seem to serve any useful purpose. We have also found several cases in which our rules were organized in a confusing manner. Accordingly, we propose to eliminate several rules in Part 61 and to move some rules within Part 61 to clarify which rules apply to which carriers. In

¹ See *Competition in the Interstate, Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Mandatory Detariffing Second Report and Order*); *recon.*, 12 FCC Rcd 15014 (1997) (*Mandatory Detariffing Reconsideration Order*); *stayed sub nom. MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. 1997).

addition, we have discovered a number of duplicative rules in Part 61, and we propose eliminating that duplication in a manner that does not affect any of the substantive requirements currently placed on carriers. Finally, the Commission waives a number of rules on a regular basis, and we propose revising our rules to eliminate the need for granting such waivers on a carrier-by-carrier basis.

3. All of our proposed rule revisions are set forth in Appendix A to this Order. We invite interested parties to comment on these proposed rule revisions. Most of the proposed revisions in Appendix A are self-explanatory. Below, we address the proposals that may warrant some explanation.

II. PROPOSED RULE REVISIONS

A. Electronic Filing

4. In the *Tariff Streamlining Report and Order*, the Commission adopted regulations implementing the tariff streamlining provisions of the Telecommunications Act of 1996 (1996 Act).² The Commission decided to establish a program of mandatory electronic filing of tariffs and associated documents by incumbent local exchange carriers (LECs), and delegated authority to the Bureau to establish this program.³ On November 17, 1997, the Bureau made the Electronic Tariff Filing System (ETFS) available for voluntary filing by incumbent LECs.⁴ The Bureau also announced that the use of ETFS would become mandatory for incumbent LECs in early 1998.⁵ Subsequently, in the *ETFS Order*, the Bureau established procedures for mandatory electronic tariff filing applicable to incumbent LECs.⁶ In this Notice, we therefore propose to amend Part 61 to codify rules to be applicable to carriers submitting tariff filing fees electronically.

² *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC 2170 (1997) (*Tariff Streamlining Report and Order*).

³ *See* Section 61.52(c) of the Commission's Rules, 47 C.F.R. § 61.52(c); *Tariff Streamlining Report and Order*, 12 FCC Rcd at 2195 (paras. 47-48).

⁴ *See Public Notice, Common Carrier Bureau Implements Electronic Tariff Filing System*, 12 FCC Rcd 19714 (1997) (*ETFS Public Notice*).

⁵ *ETFS Public Notice*, 12 FCC Rcd at 19714.

⁶ *Electronic Tariff Filing System (ETFS)*, Order, DA 98-914 (Com. Car. Bur., released May 28, 1998) (*ETFS Order*).

B. Posting

5. Section 61.72 requires issuing carriers to post their tariffs, *i.e.*, keep them accessible to the public during normal business hours. In any state or territory of the United States in which the carrier has chosen to maintain a business office or offices open to the public, the carrier must post its tariffs in at least one of those business offices.⁷ In addition, a carrier must provide a telephone number for public inquiries about information contained its tariffs. This telephone number should be made readily available to all interested parties.⁸

6. In light of alternatives now available to customers with questions about their service, it may no longer be necessary to require carriers to keep business offices open to the public for the purpose of posting tariffs. First, ETFS makes all interstate tariffs of the incumbent LECs available to the public at the Commission's Internet web site.⁹ Furthermore, customers can obtain copies of any carrier's tariff from the Commission's copying contractor through mail or fax, without traveling to a carrier's business office in person. In addition, customers can often get satisfactory answers to their questions by contacting carriers by telephone or e-mail. Therefore, for many customers, it is at least possible that traveling to the carrier's business office would not be the most efficient or convenient method of examining a carrier's tariffs.

7. Accordingly, we seek comment on whether we should revise Section 61.72 to require that carriers only provide a telephone number for public inquiries about information contained in their tariffs.¹⁰ We also seek comment on requiring carriers not subject to mandatory electronic tariff filing requirements to post their tariffs on their Internet web sites. Alternatively, we invite parties to comment on whether some particular class of carrier should be subject to either more or less stringent posting requirements than those we are considering here. Any party making such an argument should explain in detail its reasons for its position. Finally, we invite interested parties to suggest alternative requirements for responding to public inquiries about tariffs.¹¹

⁷ Section 61.72(a)(1) of the Commission's Rules, 47 C.F.R. § 61.72(a)(1).

⁸ Section 61.72(a)(2) of the Commission's Rules, 47 C.F.R. § 61.72(a)(2).

⁹ *ETFS Order* at para. 3.

¹⁰ We will keep tariffs available for public inspection in the Commission's Public Reference Room, regardless of any revisions to our tariff posting requirements we may adopt in this proceeding.

¹¹ In 1996, the Commission imposed mandatory detariffing requirements on nondominant IXC's. See *Mandatory Detariffing Second Report and Order*, 11 FCC Rcd 20730; *Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd 15014. Those requirements have been stayed by the Court of Appeals for the District of Columbia Circuit pending judicial review. *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. 1997). In 1997, the Commission adopted a notice of proposed rulemaking seeking comment on complete mandatory detariffing for non-incumbent LEC providers of interstate exchange access services. *Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 97-146, 12 FCC Rcd 8596, 8613 (paras. 33-34) (1997). That proceeding is still pending. Depending on the results of those proceedings, issues raised by the posting requirements applicable to

C. Effective Period Required Before Changes

8. Currently, a tariff must be in effect for at least 30 days before the issuing carrier is permitted to revise it.¹² This rule was originally intended to limit rate churn, rapid rate increases and decreases in a short period. Rate churn can be disruptive or confusing for consumers, and makes it difficult to determine what rates are applicable at any given time.¹³ Retaining a 30-day minimum effective period, however, now may also delay nondominant carriers' responses to market pressures. Therefore, we propose adopting a new rule, Section 61.24 in the Appendix, to reduce the minimum effective period for nondominant carriers' tariffs to 15 days. We seek comment on this proposal.

9. We do not propose revising the minimum effective period for dominant carriers' tariffs, however. By definition, dominant carriers retain market power, and so face market pressure, if at all, to a much lesser degree than nondominant carriers. Therefore, we expect that the need to protect dominant carriers' customers from the disruption and confusion of unnecessary rate churn will continue to outweigh dominant carriers' desire to react more quickly to any market pressure they may face. Accordingly, we propose amending Section 61.59 only to limit the applicability of the 30-day minimum effective period to dominant carriers' tariffs.¹⁴ We invite comment on this proposal, and on our proposed balance between customer and carrier interests.

D. Reorganization of Part 61

1. Generally

10. Many of our tariff rules apply only to nondominant carriers, or only to dominant carriers. Other tariff rules apply to all carriers. Our current rules, however, may not in all instances be sufficiently clear as to the class or classes of carriers to which the specific rules apply. Therefore, we propose separating our Part 61 rules into subparts, as shown in Appendix A, and moving certain, specific rules to different subparts in order for carriers to more easily identify the rules applicable to their situations. For example, we propose redesignating Sections 61.53, 61.55, 61.56, and 61.57 as Sections 61.83, 61.85, 61.86, and 61.87, respectively, so that these rules continue to apply to all carriers. We have tried to define our proposed subparts to minimize the number of sections that would need to be moved. We seek comment on our proposed reorganization, as shown in Appendix A.

nondominant IXC's or non-incumbent LEC providers of interstate exchange access services may become moot.

¹² See Section 61.59 of the Commission's Rules, 47 C.F.R. § 61.59.

¹³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, FCC 98-120 (released June 22, 1998); *AT&T Corporation's Petition for Waiver of Section 61.47(f)(2) of the Commission's Rules*, Order, 10 FCC Rcd 12440, 12447 (para. 16) (Com. Car. Bur., 1995); *Amendment of Parts 1 and 61 of the Commission's Rules*, CC Docket No. 83-992, Report and Order, 98 FCC 2d 855, 873 (paras. 64-65) and n.37 (1984).

¹⁴ The proposed new Sections 61.59(b) and (c) in the Appendix are intended to clarify existing requirements, not to modify any requirement or to create new requirements.

2. Reorganization of Nondominant Carrier Rules

11. In 1996, pursuant to Section 10 of the Communications Act,¹⁵ the Commission decided to forbear from enforcing Section 203 of the Act with respect to nondominant interexchange carriers (IXCs). Accordingly, nondominant IXCs were neither required nor permitted to file tariffs for their provision of interstate interexchange services.¹⁶ On February 13, 1997, the United States Court of Appeals for the District of Columbia Circuit stayed the rules adopted in the *Mandatory Detariffing Second Report and Order* pending judicial review.¹⁷ As a result of the court's ruling, nondominant IXCs remain obligated to file tariffs pursuant to the tariffing rules we sought to eliminate in the *Mandatory Detariffing Second Report and Order*. In addition, because the *Mandatory Detariffing Second Report and Order* redesignated Sections 61.20 through 61.23 of our rules as Sections 61.21 through 61.24, each of these section numbers will refer to a different rule, depending on the outcome of the pending judicial review. This is potentially confusing. Accordingly, we propose to redesignate the Section 61.20 adopted in the *Mandatory Detariffing Second Report and Order*, imposing mandatory detariffing on nondominant IXCs, as Section 61.19, as shown in Appendix A. We also propose to keep the currently effective Sections 61.20-23 designated as Sections 61.20-23, regardless of the outcome of the pending judicial review.

E. Notice Requirements

12. Pursuant to Section 204(a)(3) of the Act, adopted in the 1996 Act, LECs are now permitted to file rate decreases on seven days' notice, and rate increases on 15 days' notice.¹⁸ These notice requirements are codified in two places, Sections 61.58(a)(2) and 61.58(d). These notice requirements appear inconsistent with other notice requirements in Section 61.58. For example, Section 61.58(c) establishes notice periods for price cap LECs ranging from 14 days to 90 days for various kinds of price cap tariff filings. This inconsistency can be resolved only if Section 61.58 is read in conjunction with Section 61.51(b), which explains that Section 61.58 also establishes notice periods for LECs choosing not to take advantage of the shorter notice periods permitted by Section 204(a)(3) of the Act.¹⁹ We tentatively conclude that it would simplify Part 61 to codify all notice requirements for dominant carriers in Section 61.58. Accordingly, we propose to move the notice requirements in Section 61.51 to Section 61.58(a)(2), and to eliminate Sections 61.51 and 61.58(d). We also propose to move the notice requirements for the first price cap tariff filing of a LEC electing price cap regulation from Section 61.48 to Section 61.58. This reorganization is not intended to

¹⁵ Section 10 of the Communications Act, 47 U.S.C. § 160.

¹⁶ *Mandatory Detariffing Second Report and Order*, 11 FCC Rcd at 20732-33 (paras. 3-5).

¹⁷ *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit*, Public Notice, CC Docket No. 96-61, DA 97-493, 5 Com. Reg. (P&F) 505 (released Mar. 6, 1997). *See also Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd at 15017-18 (para. 4).

¹⁸ *See Tariff Streamlining Report and Order*, 12 FCC Rcd 2170.

¹⁹ *See* Section 61.51 of the Commission's Rules, 47 C.F.R. § 61.51.

change any notice requirements. Under Section 61.58, dominant carriers would still have a choice between the notice periods mandated by Section 204(a)(3) of the Act and the notice periods required by our rules prior to the adoption of the 1996 Act. Alternatively, we invite comment on eliminating all the notice requirements for dominant carriers in our rules other than those mandated by Section 204(a)(3) of the Act. Under this alternative proposal, a carrier would no longer require a waiver in order to file a tariff on a notice period longer than mandated by the 1996 Act, but shorter than those previously required by our rules.²⁰

13. Finally, we propose a new rule to be codified as Section 61.58(e)(3). Currently, Alascom is required to file tariffs for its common carrier services on 90 days' notice under Section 69.3(a) of the Commission's Rules, and the 1995 Commission Order implementing the Federal-State Alaska Joint Board decision.²¹ Section 61.58(e)(3) would maintain the *status quo*, by continuing to require Alascom to file its annual tariff on 90 days' notice. Alternatively, we invite comment on permitting Alascom to file its tariff under a shorter notice period. Any party advocating a shorter notice period for Alascom should address whether the Commission could revise Alascom's notice requirements without initiating a new joint board proceeding.

F. Rules for Nondominant Carrier Tariff Filings

14. We also propose amendments to the mandatory detariffing rule that we propose to redesignate as Section 61.19, as shown in Appendix A.²² In particular, we propose to eliminate the last sentence of Section 61.19(b), which reads as follows: "A carrier access code is a five or seven digit access code that enables callers to reach any carrier, presubscribed or otherwise, from any telephone." This definition is not necessarily accurate. First, a caller can reach any carrier via an access code only in cases where the telephone is served by a central office that has been converted to equal access. While the overwhelming majority of central offices have been converted to equal access, there remain exceptions. In addition, some IXCs do not want to offer service to casual callers using the access code, and have instructed the LEC not to forward any calls made via use of the access code. We propose simply eliminating this definition. Alternatively, we invite parties to recommend definitions of "access code" for the rule we plan to redesignate as Section 61.19(b). This proposed revision, and all the other proposed revisions to this Section listed in Appendix A, are subject to the pending court proceeding.

²⁰ See *Support Material for Carriers to File to Implement Access Charge Reform Effective January 1, 1998*, Order, 12 FCC Rcd 18306, 18307-08 (para. 5) (Com. Car. Bur., Comp. Pricing Div., 1997).

²¹ Section 69.3(a) of the Commission's Rules, 47 C.F.R. § 69.3(a); *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3027 (para. 23) (1994). See also *Investigation of Alascom, Inc., Interstate Transport and Switching Services*, CC Docket No. 95-182, Order, 12 FCC Rcd 3646, 3649 (para. 7) (Com. Car. Bur., Comp. Pricing Div., 1997).

²² As we explained above, this rule was originally adopted as Section 61.20 in the *Mandatory Detariffing Second Report and Order*, and has been stayed pending judicial review. This should not be confused with the Section 61.20 currently in effect, governing the method for filing tariff publications.

G. International Tariffs

15. In this Notice, we propose two revisions to the international tariff filing rules. First, we propose a new rule, Section 61.77, requiring carriers to maintain separate tariffs for domestic and international services. Because different rules apply to domestic and international tariff filings, requiring separate domestic and international tariffs would facilitate review of those tariffs. On the other hand, it is possible that it would be administratively burdensome for a carrier to separate its domestic services from its international services to create separate tariffs. We invite comment on this proposal. Our second proposal is to adopt specific rules in Part 61 for international tariffs of carriers regulated as dominant on particular routes. We do not intend to make any substantive change to the dominant international tariff requirements in this proceeding.

H. Revisions to Price Cap Rules

16. Under price cap regulation, a carrier's prices are limited by a price cap index (PCI), which in pertinent part is adjusted annually by a measure of inflation minus an "X-Factor."²³ When the Commission adopted price cap regulation in 1989, the price cap rules were applicable only to dominant IXC's. When the Commission later adopted price cap rules for incumbent LECs, it cross-referenced the IXC price cap rules in many places.²⁴ Subsequently, the Commission determined that all IXC's should be treated as nondominant.²⁵ As a result, the IXC price cap rules no longer appear to serve any purpose, and we propose removing them from Part 61. Removing the IXC price cap rules, however, requires revising the incumbent LEC price cap rules that cross-reference the IXC price cap rules. Accordingly, we invite comment on proposed revisions to Sections 61.41 through 61.49, as set forth in Appendix A.

17. We also propose to eliminate Section 61.50 or our rules, governing optional incentive regulation.²⁶ The Commission adopted optional incentive regulation in 1993 to give small and midsized incumbent LECs an incentive to improve their productivity without forcing those carriers to

²³ Prior to the adoption of price cap regulation, the Commission relied on rate-of-return regulation, which adjusts prices to give carriers the opportunity to earn a pre-determined return on interstate investment. The Commission adopted price cap regulation because it found that rate-of-return regulation did not create adequate efficiency incentives for regulated carriers, and required administratively burdensome cost allocation rules to enforce. See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789-91 (paras. 21-37) (1991) (*LEC Price Cap Order*).

²⁴ See *LEC Price Cap Order*, 5 FCC Rcd at 6867-75.

²⁵ *Motion of AT & T Corp. to be Reclassified as a Non-dominant Carrier*, Order, 11 FCC Rcd 3271 (1995); *Motion of AT & T Corp. to be Declared Non-dominant for International Service*, Order, 12 FCC Rcd 17963 (1996).

²⁶ Section 61.50 of the Commission's Rules, 47 C.F.R. § 61.50.

elect a form of price cap regulation designed for large incumbent LECs.²⁷ Cincinnati Bell was the only LEC that ever availed itself of this optional incentive regulation, and it elected to become subject to price cap regulation beginning July 1, 1997.²⁸ Accordingly, the optional incentive regulation rule is not currently being applied to any incumbent LEC. Absent any other incumbent LEC expressing any interest in optional incentive regulation, it does not appear that this rule currently serves the public interest. We seek comment on this proposal to eliminate Section 61.50 of our rules.

18. In addition, the United States Telephone Association (USTA) filed a waiver petition in October 1997, claiming that Section 61.47 of our rules precludes "targeting" of exogenous cost changes to particular service categories within a basket, as is required by the Commission in the *Access Reform First Report and Order*.²⁹ Currently, the Commission's Rules explain how incumbent LECs should allocate exogenous cost changes between price cap baskets,³⁰ but do not address the allocation of exogenous cost changes within a basket. USTA also claimed that basing the calculation of presubscribed interexchange carrier charges (PICCs) on projected revenue and demand data, as required by our rules, would be administratively burdensome, and so sought a waiver of Section 69.153 to base PICCs on base period data. The Common Carrier Bureau granted these waivers.³¹ We invite comment on whether we should revise Sections 61.47 and 69.153 of our rules to reflect the rate development procedures developed by USTA in its waiver petition.

19. Finally, we seek comment on the proposed Section 61.45(b)(2) in Appendix A. Currently, Section 61.45(b) requires LECs subject to price cap regulation to calculate their PCIs

²⁷ *Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, Report and Order, CC Docket No. 92-135, 8 FCC Rcd 4545 (1993) (*Optional Incentive Regulation Order*). LECs electing the optional incentive plan are required to recalculate their rates every two years based on historical costs and demand. LECs have incentive to reduce their costs during this two-year period because cost decreases permit greater earnings. *Optional Incentive Regulation Order*, 8 FCC Rcd at 4547 (paras. 16-17). These LECs are required to establish the same baskets and service categories as are required by price cap LECs, and aggregate prices in each basket or service category are permitted to increase no more than 10 percent during the two-year period. *Optional Incentive Regulation Order*, 8 FCC Rcd at 4550-51 (paras. 35-39).

²⁸ Cincinnati Bell Telephone Co., Tariff F.C.C. No. 35, Transmittal No. 706 (effective July 1, 1997). Carriers electing price cap regulation are ordinarily not permitted to revert back to rate-of-return regulation. Section 61.41(d) of the Commission's Rules, 47 C.F.R. § 61.41(d).

²⁹ See *Access Charge Reform*, First Report and Order, CC Docket No. 96-262, 12 FCC Rcd 15982, 16081-85 (paras. 229-40) (*Access Reform First Report and Order*). The *Access Reform First Report and Order* requires price cap LECs to apply, or "target," any rate reductions otherwise required by the "GDP-PI minus X" part of the price cap index (PCI) for other baskets to the trunking basket PCI, and the service band index (SBI) for the transport interconnection charge (TIC). See *Access Reform First Report and Order*, 12 FCC Rcd at 16084 (para. 236).

³⁰ See Section 61.45(d)(4) of the Commission's Rules, 47 C.F.R. § 61.45(d)(4).

³¹ See *United States Telephone Association, Petition for Waiver of Sections 61.47, 69.153(c)(1), 69.153(d)(1)(i), and 69.153(d)(2)(i) of the Commission's Rules*, 12 FCC Rcd 18133 (Com. Car. Bur. 1997).

pursuant to the formula for IXC PCIs spelled out in Section 61.44(b), "as further explained in § 61.44(e), (f), (g), and (h)." Section 61.44(e) requires price cap carriers calculating "w" to apportion "access costs" among price cap baskets using the methodology specified in Section 61.44(d).³² Proposed Section 61.45(b)(2) is intended to incorporate the requirements of current Section 61.44(d) into Section 61.45. Section 61.44(d), however, explains how IXCs subject to price cap regulation were required to allocate the access costs they incurred in their provision of interexchange services. Thus, it appears that the requirements in current Section 61.44(d) and proposed Section 61.45(b)(2) are not relevant to LECs subject to price cap regulation, except, perhaps, for their calculation of the PCI for the interexchange basket. We invite parties to discuss whether proposed Section 61.45(b)(2) is necessary at all, and if so, whether it should be expressly limited to the interexchange basket. We also invite parties to suggest clearer language for Section 61.45(b)(2). Finally, we invite parties to propose alternative methods for calculating "w" and explain why their alternatives would produce more desirable results.

III. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

20. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.³⁴ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

B. Paperwork Reduction Act

21. Pursuant to Section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), we are required to solicit comment through this notice of proposed rulemaking to:

- (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

³² The "w" term in the IXC PCI formula was intended as a weighting factor to ensure that the (GDP-PI - X) adjustment is not applied to exogenous cost adjustments. See *Policy and Rules Concerning Rates for Dominant Carriers*, Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 3 FCC Rcd 3195, 3437 (para. 449) (1988) (*AT&T Price Cap Further Notice*).

³³ See Amendment of 47 C.F.R. § 1.1200 *et seq.* Concerning *Ex Parte* Presentations in Commission Proceedings, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348 (para. 27) (1997) (citing 47 C.F.R. § 1.1204(b)(1)).

³⁴ See 47 C.F.R. § 1.1206(b)(2), as revised.

- (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (iii) enhance the quality, utility, and clarity of the information to be collected; and
- (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

22. Accordingly, we seek comment on these issues.

C. Initial Regulatory Flexibility Act Analysis

23. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

24. Reason for action. The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition.

25. Objectives. To repeal or modify any rules in Part 61 that are no longer necessary in the public interest, as required by Section 11 of the Communications Act of 1934, as amended.

26. Legal Basis. The proposed action is supported by Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. § 161.

27. Description, potential impact and number of small entities affected. For purposes of this Notice, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.³⁵ Under the SBA, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.³⁶ The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813

³⁵ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

³⁶ 15 U.S.C. § 632. See, e.g., *Brown Transport Truckload, Inc., v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

(Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees.³⁷

28. *Total Number of Telephone Companies Affected.* The proposals under consideration in this Notice, if adopted, would affect all telecommunications carriers regulated by the Commission. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3497 firms engaged in providing telephone service, as defined therein, for at least one year.³⁸ This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated.³⁹

29. We believe that dominant carriers are not small businesses for IRFA purposes because they are dominant in their field of operation. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act⁴⁰ that incumbent LECs are not subject to regulatory flexibility analysis requirements because they are not small businesses.⁴¹ In order to remove any possible issue of Regulatory Flexibility Act compliance, we nevertheless tentatively conclude that dominant carriers should be included in this IRFA. We seek comment on this tentative conclusion.

30. Reporting, record keeping and other compliance requirements. None of the proposed rules in this notice are intended to increase the reporting, record keeping and other compliance requirements of any telecommunications carrier.

31. Federal rules which overlap, duplicate or conflict with this rule. None.

32. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. As explained above, it is not clear at this stage of the proceeding whether any of the parties that will be affected by these proposed rules, if adopted, can be considered "small entities" within the meaning of Section 603(c). At this time, we have not eliminated any alternatives from our consideration.

³⁷ 13 C.F.R. § 121.201.

³⁸ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

³⁹ 15 U.S.C. § 632(a)(1).

⁴⁰ See 5 U.S.C. § 605(b).

⁴¹ See, e.g., Expanded Interconnection with Local Telephone Companies, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, 2959 (1987), citing MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241, 338-39 (1983).

D. Comment Filing Dates

33. Pursuant to applicable procedures set forth in Section 1.399 and 1.411 *et seq.* of the Commission's Rules, 47 C.F.R. Sections 1.399, 1.411 *et seq.*, interested parties may file comments with the Secretary, Federal Communications Commission, Washington D.C. 20554 no later than **30 days** after a summary of this notice is published in the Federal Register. Interested parties may file replies no later than **60 days** after a summary of this notice is published in the Federal Register. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleading with the Competitive Pricing Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554, and one copy of any pleadings should be submitted on computer disk to the Industry Analysis Division, Common Carrier Bureau, Room 534, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington D.C. 20554.

IV. ORDERING CLAUSE

34. Accordingly, pursuant to Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. § 161, IT IS ORDERED that NOTICE IS HEREBY GIVEN OF the rulemaking described above and that COMMENT IS SOUGHT on these issues.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A**PROPOSED REVISIONS TO PART 61**

1. Insert before Section 61.1, "**Subpart A - Preface**".
2. Redesignate Section 61.2 as Section 61.2(a), Section 61.35 as Section 61.2(b), and Section 61.36 as Section 61.2(c), and revise the heading for Section 61.2 as follows:

§ 61.2 General Tariff Requirements.

3. Revise Section 61.3 as follows:

§ 61.3 Definitions.

* * *

(e) Base period. For carriers subject to §§ 61.41-61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall exclude amounts associated with exogenous adjustments to the PCI for the lower formula adjustment mechanism permitted by § 61.45(d)(1)(vii) of this chapter.

* * *

(w) Price Cap Index (PCI). An index of prices applying to each basket of services of each carrier subject to price cap regulation, and calculated pursuant to § 61.45.

* * *

(y) Price cap tariff. Any tariff filing involving a service subject to price cap regulation, or that requires calculations pursuant to §§ 61.45, 61.46, or 61.47.

* * *

4. Insert before Section 61.18, "**Subpart C - General Rules for Nondominant Carriers**".

5. Insert new Section 61.18.

§ 61.18 Scope.

The rules in this subpart apply to all nondominant carriers.

6. Redesignate Sections 61.20 through 61.24 as Sections 61.19 through 61.23, and revise Section 61.19 as follows:

§ 61.19 Detariffing of domestic, interstate, interexchange services.

* * * * *

(b) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file a tariff for such interstate service applicable to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

7. Revise redesignated Sections 61.20(b)(1) and 61.20(c) to read as follows:

§ 61.20 Method of Filing Publications.

* * * * *

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * *

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one 3 1/2 inch diskette or CD-ROM containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette or CD-ROM of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff and Pricing Analysis Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be

received on the same date as the filings in paragraph (a) of this section. In cases where the a single diskette or CD-ROM does not provide sufficient capacity for the carrier's entire tariff filing, the issuing carrier may submit two or more diskettes, or two or more CD-ROMs, as necessary.

8. Revise redesignated Section 61.21(a)(1) to read as follows:

§ 61.21 Cover letters.

(a)(1) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8.5 by 11 inches (21.6 cm x 27.9 cm) in size, and must be plainly printed in black ink. All transmittal letters should briefly explain the nature and purpose of the filing and indicate the date and method of filing of the original cover letter, as required by Section 61.20(b)(1) of this Part.

9. Revise redesignated Section 61.22(a) to read as follows:

§ 61.22 Composition of tariffs.

(a) The tariff must be submitted on a 3 1/2 inch (8.89 cm) diskette, or a 5 inch CD-ROM, formatted in an IBM-compatible form using either WordPerfect 5.1 or Microsoft Word 6 software. Neither diskettes nor CD-ROMs shall contain more than one tariff. The diskette or CD-ROM must be submitted in "read only" mode. The diskette or CD-ROM must be clearly labelled with the carrier's name, Tariff Number, software used, and the date of submission. When multiple diskettes or CD-ROMs are submitted, the issuing carrier shall clearly label each diskette in the following format: "1 of ____", "2 of ____", etc..

10. Amend redesignated Section 61.22(c) by redesignating it as Section 61.22(c)(1), and inserting new Section 61.22(c)(2) to read as follows:

§ 61.22 Composition of tariffs.

* * * * *

(c)(1) * * *

(2) Any issuing carrier submitting tariffs on ten or more diskettes that wishes to revise its tariff is permitted to do so by refiling only those diskettes on which the changed material is located. Any such carrier shall file a current effective version of their entire tariff on the first business day of each month. For purposes of this paragraph, "business day" is defined in Section 1.4(e)(2) of this Chapter.

11. Amend redesignated Section 61.22 by adding new Section 61.22(e), to read as follows:

§ 61.22 Composition of tariffs.

* * * * *

(e) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal must accompany each tariff filed. The transmittals must be numbered in a series separate from transmittals for non-contract tariff filing. Numbers must appear on the face of the transmittal and be in the form of "CTT No. _____", using CTT as an abbreviation for contract-based tariff transmittals. Contract-based tariffs must also be numbered in a series separate from non-contract-based tariffs. Numbers must be in the form of "CT No. _____", using CT as an abbreviation for contract-based tariffs. Each contract-based tariff must be assigned a separate number. Transmittals and tariffs subject to this paragraph shall be filed beginning with the number "1" and shall be numbered consecutively.

12. Amend redesignated Section 61.23(c) to read as follows:

§ 61.23 Notice Requirements.

* * * * *

(c) All tariff filings of domestic and international non-dominant carriers must be made on at least one day's notice.

13. Insert new Section 61.24 as follows:

§ 61.24 Effective period required before changes.

(a) Except as provided in Section 61.23(c)(3) or except as otherwise provided by the Commission, new rates or regulations must be in effect for at least 15 days before a nondominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 15 days after the scheduled effective date of the pending revisions.

14. Insert new Section 61.25 to read as follows:

§ 61.25 References to other instruments.

A non-dominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier's F.C.C. tariff publication, provided that the following conditions are met:

- (a) The tariff being cross-referenced must be on file with the Commission and in effect;

(b) The issuing carrier must specifically identify in its tariff the cross-referenced tariff by Carrier Name and F.C.C. Tariff Number;

(c) The issuing carrier must specifically identify in its tariff the rates being cross-referenced so as to leave no doubt as to the exact rates that will apply, including but not limited to any applicable credits, discounts, promotions; and

(d) The issuing carrier must keep its cross-references current.

15. Insert before Section 61.28, "**Subpart D - General Tariff Rules for International Dominant Carriers**".

16. Insert new Section 61.28 to read as follows:

§ 61.28 International Dominant Carrier Tariff Filing Requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route due only to a foreign carrier affiliation pursuant to Section 63.10 of this Chapter shall file tariffs for those services on at least one day's notice without cost support.

(b) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to Section 63.10 of this Chapter shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in Subpart E of this Part.

(c) For all tariff filing requirements other than notice and cost support requirements, any carrier classified as dominant for the provision of particular international communications services on a particular route shall file tariffs for those services pursuant to the general rules for nondominant carriers set forth in Subpart C of this Part.

17. Insert before Section 61.31, "**Subpart E - General Rules for Dominant Carriers**".

18. Insert new Section 61.31.

§ 61.31 Scope.

The rules in this subpart apply to all dominant carriers.

19. Revise Section 61.32 by replacing the phrase "Chief, Tariff Review Branch" in Section 61.32(c) with the phrase "Chief, Tariff and Pricing Analysis Branch", and by revising Section 61.32(b) to read as follows:

§ 61.32 Method of Filing Publications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in Part 1, Subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a).

* * *

20. Revise the first sentence of Section 61.33(a) to read as follows:

§ 61.33 Letters of Transmittal.

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be numbered consecutively by the issuing carrier beginning with Number 1, and must be accompanied by a letter of transmittal, (21 cm x 29.7 cm) or 8½ by 11 inches (21.6 cm x 27.9 cm) in size.

21. Revise Section 61.33(a)(3) by replacing the phrase "Chief, Tariff Review Branch" with the phrase "Chief, Tariff and Pricing Analysis Branch".
22. Revise the first sentence of Section 61.33(h)(2) as follows:

For contract-based tariffs defined in Section 61.3(m), a separate letter of transmittal may accompany each tariff filed, or the above format may be modified for filing as many publications as may be desired with one transmittal letter.

23. Revise Section 61.38(a) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This Section applies to dominant carriers whose gross annual revenues exceed \$500,000 for the most recent 12 month period of operations or are estimated to exceed \$500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This

section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42(d), (e), and (g).

24. Revise Section 61.38(b) to remove and reserve Section 61.38(b)(3).
25. Revise Section 61.38(c)(1) by replacing the phrase "Chief, Tariff Review Branch" with the phrase "Chief, Tariff and Pricing Analysis Branch".
26. Amend Section 61.38 by adding paragraph (g) as follows:

* * *

(g) Above the bottom margin of each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

27. Revise Section 61.39(a), and amend Section 61.39 by adding paragraph (f) as follows:

§ 61.39 **Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.**

(a) *Scope.* This Section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this Chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * *

(f) Above the bottom margin of each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

28. Revise Section 61.41 by removing and reserving paragraph (a)(1).
29. Revise Section 61.42 by removing and reserving paragraphs (a), (b) and (c).
30. Revise Section 61.42(d)(1) by inserting the following language at the end:

§ 61.42 **Price cap baskets and service categories.**

* * * * *

(d) * * *

(1) * * *

For purposes of Sections 41 through 49 of this part, this basket shall be referred to as the "common line basket."

31. Amend Section 61.42(d)(2) by inserting the following language at the end:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(2) * * *

For purposes of Sections 41 through 49 of this part, this basket shall be referred to as the "traffic-sensitive basket."

32. Amend Section 61.42(d)(3) by inserting the following language at the end:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(3) * * *

For purposes of Sections 41 through 49 of this part, this basket shall be referred to as the "trunking basket."

33. Amend Section 61.42(d)(4) by inserting the following language at the end:

For purposes of Sections 41 through 49 of this part, this basket shall be referred to as the "interexchange basket."

34. Amend Section 61.42(d)(6) by inserting the following language at the end:

For purposes of Sections 41 through 49 of this part, this basket shall be referred to as the "marketing expense basket."

35. Revise the first sentence of Section 61.42(g) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * *

(g) New services, other than those within the scope of paragraph (f) of this section, * * *

36. Revise Section 61.43 to remove the references to Section 61.44, to read as follows:

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to Sections 61.45 through 61.47, and that incorporate the costs and rates of new services into the PCI, API, or SBI calculations pursuant to Sections 61.45(g), 61.46(b), and 61.47 (b) and (c). Carriers may propose rate or other tariff changes more often than annually, consistent with the requirements of Section 61.59.

37. Remove and reserve Section 61.44.

38. Redesignate Section 61.45(b) as Section 61.45(b)(1), revise it, and add Sections 61.45(b)(2) through (6), to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * *

(b)(1) Adjustments to local exchange carrier PCIs for the traffic-sensitive basket described in Section 61.42(d)(2) shall be made pursuant to the following formula:

$$PCI_t = PCI_{t-1}[1 + w(GDP-PI - X) + \Delta Z/R]$$

where

GDP-PI = the percentage change in the GDP-PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = 6.5%,

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1} , measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1} , summing the results, and adding the products of base period quantities for each PICC established in Section 69.153 of this Chapter and the portion of that PICC that is associated with the basket,

$w = R - (\text{access rate in effect at the time the PCI was updated to } PCI_{t-1}, \text{ multiplied by base period demand}) + \Delta Z$, all divided by R ,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(2) The " $w(\text{GDP-PI} - X)$ " component of the PCI formula specified in paragraph (b)(1) of this section shall be employed only in the adjustment made in connection with the annual price cap filing. In calculating the " w " variable in the formula detailed in paragraph (b)(1) of this section, the access costs that must be subtracted from the " R " variable shall be apportioned among the baskets specified in Sections 61.42(d)(2), (3), (4), and (6) as follows:

(i) The net change in total non-traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket's share of total base period non-traffic sensitive minutes of access (both originating and terminating);

(ii) The net change in total traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket's share of total base period traffic sensitive minutes of access;

(iii) Changes in special access costs, calculated at base period demand, shall be assigned directly to the trunking basket specified in Section 61.42(d)(3).

(3) Adjustments to local exchange carrier PCIs for the trunking basket designated in Section 61.42(d)(3) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this Section.

(4) Adjustments to local exchange carrier PCIs for the interexchange basket designated in Section 61.42(d)(4) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this Section. Notwithstanding that formula, the value of X for this basket shall be 3.0 percent.

(5) [reserved]

(6) Adjustments to local exchange carrier PCIs for the marketing expense basket designated in Section 61.42(d)(6) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this Section.

39. Revise the language in Section 61.45(c)(1) that appears prior to the formula, to read as follows:

(c)(1) In the event that local exchange carrier imposes a per-minute carrier common line charge pursuant to Section 69.154 of this chapter, and subject to paragraphs (c)(2) and (c)(3) of this section,

adjustments to local exchange carrier PCIs for the common line basket designated in Section 61.42(d)(1) shall be made pursuant to the following formula:

40. Revise the definition of "R" in the formula in Section 61.45(c)(1), to read as follows:

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1} , summing the results, and adding the products of base period quantities for each PICC established in Section 69.153 of this Chapter and the portion of that PICC that is associated with the common line basket,

41. Insert new Section 61.45(c)(2) to read as follows:

(c)(2) The " $w[(GDP-PI - X - (g/2))/(1 + (g/2))]$ " component of the PCI formula contained in paragraph (c)(1) of this section shall be employed only in the adjustment made in connection with the annual price cap filing.

42. Insert new Section 61.45(c)(3) to read as follows:

* * *

(c)(3) The formula set forth in paragraph (c)(1) of this section shall be used by a local exchange carrier only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in § 61.45(b).

43. Amend Section 61.45(d)(4) by adding the following language at the end:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * *

(d) * * *

(4) * * *

For purposes of this Chapter, exogenous cost changes that are not targeted to a specific price cap service category or subcategory pursuant to Commission Rule or Order shall be referred to as "untargeted exogenous cost changes."

44. Revise Section 61.45(f) to replace the phrase "paragraph (c)" with "paragraphs (b) and (c)".

45. Revise Section 61.45(i) as follows:

(i)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that charges a per-minute interconnection charge pursuant to Section 69.124 or Section 69.155 of this chapter during the base year shall not make any reductions to its PCIs associated with its common line and traffic-sensitive baskets in its annual access filing for that year. The PCI reductions for the common line and traffic sensitive baskets that otherwise would be required by paragraphs (b) and (c) of this section shall be applied to the trunking basket. These PCI reductions shall be made after the PCI for the trunking basket described in Section 61.42(d)(3) using the PCI formula in Section 61.45(b).

(2) Notwithstanding the provisions of paragraph (b) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that charges a per-minute interconnection charge pursuant to Section 69.155 of this chapter during the base year shall not make any reductions to its PCI associated with its marketing expense basket in its annual access filing for the tariff year. That carrier shall apply the PCI reductions that otherwise would be required for the marketing expense basket pursuant to paragraph (b) of this section to the trunking basket. This reduction is to be made after any adjustment made pursuant to paragraph (i)(1) of this section.

(3) [reserved]

(4) Effective January 1, 1998, the reduction in the PCI for the trunking basket designated in Section 61.42(d)(3) that results from paragraphs (i)(1) and (i)(2) of this section shall be determined by multiplying the PCI for the trunking basket by one minus the ratio of the dollar effect of the PCI reductions otherwise applicable to the common line, traffic-sensitive, and marketing expense baskets, to the dollar effect of the PCI reduction for the trunking basket.

46. Revise Section 61.45(j)(2) as follows:

* * *

(2) exclude the amount of any exogenous adjustments permitted or required for the common line and traffic sensitive baskets, defined in Sections 61.42(d)(1) and (d)(2), from the retargeting adjustment to the PCI for the trunking basket defined in Section 61.42(d)(3).

47. Revise Section 61.47(e) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (g) and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in the SBI, to an annual increase of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price cap

regulation as that term is defined in s 61.3(x), there shall be no lower pricing band for any service category or subcategory.

48. Delete Section 61.47(f).

49. Revise Section 61.47(i)(1) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * *

(i) (1) In the event that a price cap local exchange carrier is imposing an interconnection charge on its access customers pursuant to Sections 69.124 and/or 69.155, and to the extent that Sections 61.45(b) and 61.45(i) require that local exchange carrier to reduce its PCI for its trunking basket, as defined in Section 61.42(d)(3), that carrier is required to reduce its SBI for its interconnection charge service band, as defined in Section 61.42(e)(2)(vi), by an amount proportional to its trunking basket PCI reduction. This SBI reduction shall be determined by dividing the sum of the dollar amount of any PCI reduction required by Section 61.45(i), by the dollar amount associated with the SBI for the interconnection charge service band, and multiplying the SBI for the interconnection charge service band by one minus the resulting ratio.

(2) Any exogenous cost reduction that is untargeted within the meaning of Section 61.45(d)(4) of this Chapter shall be reflected in other service band indices for service categories in the traffic sensitive and trunking baskets as follows: